STATUTE OF LIMITATIONS—NEW ACTION WHERE FORMER FAILS NOT ON ITS MERITS.—By Virginia Code, sec. 2934 (amended by Acts 1897-8, p. 252), provision is made for preserving a cause of action against the bar of the statute of limitations, where a former action brought in due time, fails from various causes mentioned, and not on the merits.

A statute of similar though not identical import, exists in Ohio, the practical effect of which is to declare that wherever an action brought in due time fails otherwise than on the merits, the action may be renewed within one year, regardless of the statute of limitations.

In *Pittsburg etc. R. Co.* v. *Bemis*, 59 N. E. 745, the Supreme Court of Ohio was called upon to decide whether an action brought in a Federal court, and subsequently dismissed for want of jurisdiction, came within the protection of the statute in question—the contention being that an action in a court which is without jurisdiction is not a judicial proceeding, and hence no action at all. And this view prevailed in the lower court. It was on appeal, however, *Held*, That the previous proceeding in the Federal court was an action within the purview of the statute.

Similar statutes exist in many of the States, and being of a remedial character, the tendency is to give them liberal construction. See *Smith* v. *McNeal*, 109 U. S. 426; *Woods* v. *Houghton*, 1 Gray, 580; *Caldwell* v. *Harding* (U. S. C. C. Mass.), Fed. Cas. No. 2302, 1 Low. 326; *Young* v. *Davis*, 30 Ala. 213. In *Sweet* v. *Light Co.*, 97 Tenn. 252, 36 S. W. 1090, the statute received a less liberal construction, and an action brought in a court without jurisdiction was held not to bring the plaintiff within the protection of the statute.

In *Dawes* v. *New York etc. R. Co.*, 96 Va. 733, 5 Va. Law Reg. 23, it was held that the term "action" in the Virginia statute, as it appears in the Code, did not include a "suit" in equity. But the amendment of 1897-8 (p. 252), seems to have been drawn for the purpose of extending the application of the statute to suits in equity. Indeed, it is expressly applicable to all cases where the proceeding is first brought "in the wrong forum." That such is the effect is clear from the language of the amendment, and it is so stated *obiter* in Judge Riely's opinion in the case last cited.

UNIVERSITY PROFESSORS—REMOVAL—NOTICE.—The opinions of the judges of the Supreme Court of West Virginia, in the case of *Hartigan* v. *Board of Regents of West Virginia University*, 38 S. E. 698, portray a singular and deplorable condition of affairs in West Virginia. They exhibit to public gaze the quarrels of the Regents of the State University among themselves over the removal of a professor—the removed professor suing for reinstatement on the ground that he was entitled to notice and an opportunity to be heard before such action could lawfully be taken—and the judges of the Supreme Court dividing and taking sides in the quarrel, in most unjudicial fashion, and evincing intense ill feeling not only toward the one or the other of the parties, but toward each other.

Three of the judges held the professor not entitled to notice, under a statute authorizing removal only "for good cause," while a fourth entered a violent dissent, in which he metaphorically damned the entire opposition—the Regents—the president of the University at whose request the removal was alleged to have been made—and especially his colleagues on the bench, whom he charges with having

excluded him from participation in their conference on the case, and with having denied him an inspection or any knowledge of their opinion until after it was handed down. After thus paying his respects to his brother judges, the dissenting judge proceeds, in vigorous fashion, and in an opinion which would occupy more than twenty-five of our pages, to combat the legal position of the majority, and the ethical attitude of the Regents.

Brannon, P., spoke for the majority in an opinion only half as volumnious as that of the opposition; but this he supplements with two additional opinions by himself; so that while the dissenting judge wins if the count be taken by pages, the majority have him on the hip if the result depends on the number of opinions or the reckoning of noses.

The West Virginia Court has many times brought itself and the State into disrepute by its unjudicial behavior, but we doubt if a more unseemly spectacle was ever enacted in the juridical annals of America, than that presented in this case.

The *West Virginia Bar* vigorously assails the action of the majority in excluding one of the judges from their conference on the case, and declares that "When the court handed down an opinion as the opinion of the court, in which the court as a body had no opportunity to concur or dissent, they imposed upon the public, and laid themselves open to impeachment for malfeasance in office."

EQUITY PRACTICE—ANSWER OF CORPORATION, SWORN TO BY OFFICER WHO IS NOT A PARTY—EFFECT AS EVIDENCE.—On a bill in equity against a corporation for discovery and account, the answer of the defendant corporation was verified by the oath of one of its officers on his personal knowledge. *Held*, That the defendant is entitled to the benefit of the equity rule that a responsive and verified answer is evidence, only to be overcome by the testimony of two witnesses or its equivalent—*Kane* v. *Schylkill Fire Ins. Co.* (Pa.), 48 Atl. 989.

It is well settled that an answer of a corporation under its corporate seal merely, is not evidence, but mere pleading. *B. & O. R. Co.* v. *Wheeling*, 13 Gratt. 62; *Roanoke St. R. Co.* v. *Hicks*, 96 Va. 510; *Union Bank* v. *Geary*, 5 Pet. 99; *Lovell* v. *S. S. Mill Ass'n*, 6 Paige, 54. Hence, as held in *Roanoke St. R. Co.* v. *Hicks* (*supra*), a bill of discovery cannot be maintained against a corporation, unless one of its officers, supposed to be personally cognizant of the facts as to which discovery is sought, be made a co-defendant, and required to answer under oath.

The latter case is not authority, however, for the principle that if the defendant, instead of demurring, had voluntarily answered, under the oath of one of its officers familiar with the facts, as in the principal case, such answer would not have been accorded the same weight as the verified answer of an individual defendant.

The precise question decided in the principal case—namely, the effect of an answer by a corporation, sworn to by an officer as of his personal knowledge, though himself not a party defendant, seems seldom to have arisen. On principle, the decision in the principal case seems to be sound. It has the sanction of a previous Pennsylvania case (*Waller* v. *Coal Co.*, 191 Pa. 193, 43 Atl. 235), and of the Supreme Court of the United States. *Carpenter* v. *Insurance Co.*, 4 How. 219.

If the oath of an officer who is made a party defendant, not because of his interest in the suit, but merely for purposes of discovery, entitles the answer to the benefit of the usual equity rule, no reason is perceived why a similar oath by an